



07-31-2002

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND APPEAL BOARD**

IN THE MATTER OF TRADEMARK REGISTRATION NO. 2,372,585
Registered August 1, 2000

BOYDS COLLECTION, LTD.,
Petitioner,

v.

HERRINGTON & COMPANY, INC.,
Registrant.

Cancellation No. 32,146

Mark: TBC HERRINGTON'S TEDDY
BEAR CLUB & Design

Registration No.: 2,372,585**Registration Date:** August 1, 2000

REGISTRANT'S MOTION FOR JUDGMENT FOR

PETITIONER'S FAILURE TO PROVE CASE

Under 37 C.F.R. § 2.132(a) and TBMP § 535.02, if the petitioner fails to take testimony or offer any other evidence during its testimony period, the defendant may move for judgment for dismissal of the action based upon petitioner's failure to prosecute. Judgment may be granted based upon plaintiff's failure to prove its case, for example where it fails to offer any testimony or evidence and its testimony period has closed. Id.

In the instant action, the discovery period closed on January 22, 2002 and the testimony period for Petitioner BOYDS COLLECTION LTD., closed on April 22, 2002. Petitioner has failed to conduct *any* discovery in this action within the dates set by the TTAB and has failed to take *any* testimony or offer *any* other evidence during its testimony period. Accordingly, Registrant hereby moves for dismissal of this action based upon Petitioner's failure to prove its case and failure to perform or take any act to prosecute this action.

Dated: July 31, 2002

Respectfully submitted,
HERRINGTON & COMPANY, INC.

By: 

Elizabeth Clare Moreno McArthur, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2002, I served a copy of the foregoing REGISTRANT'S MOTION FOR JUDGMENT FOR PETITIONER'S FAILURE TO PROVE CASE upon petitioner Boyds Collection, Ltd.'s counsel of record, Michael J. Cherskov, Esq., by mailing a true and correct copy thereof by postage prepaid First Class United States Mail to the following address:

Michael J. Cherskov
CHERSKOV & FLAYNIK
The Civic Opera Building, Suite 1447
20 N. Wacker Drive
Chicago, IL 60606

DATED: July 31, 2002

By: Sadie Lum
Name: Sadie Lum

Express Mail mailing label No. **EL 952565444 US**

Date of Deposit **July 31, 2002**

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner for Trademark, 2900 Crystal Dr., Arlington, VA 22202-3513.

Sadie Lum

(Type or Print Name of Person Mailing Paper or Fee)

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(Signature of Person Mailing Paper or Fee)

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July 31, 2002

BY U.S. EXPRESS MAIL

United States Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513
Attention: Legal Assistant, TTAB

U.S. Patent & TMO/c/TM Mail Rcpt. Dt. #57



07-31-2002

Re: Cancellation No.: 32,146
Mark: TBC HERRINGTON'S TEDDY BEAR CLUB & Design
Registration No.: 2,372,585
Registration Date: August 1, 2000
Registrant: Herrington & Company, Inc.
Our Ref.: 40362.10

Dear Sir or Madam:

Enclosed herewith is Registrant's Motion for Judgment for Petitioner's Failure to Prove Case for the above referenced matter. So that we may have a timely record of receipt of the enclosed, please date-stamp the enclosed, stamped, self-addressed post card, and deposit it into the U.S. mail.

Please direct all correspondence regarding this matter to my attention.

Very truly yours,

Elizabeth Moreno McArthur

Elizabeth Moreno McArthur
Attorney at Law

EMM/sl

Enclosure

Copy: P. Craig Cardon